subsections (1) and (2) of this section clearly would result in a fee that unreasonbly exceeds the direct and indirect costs incurred by the State of Vermont with respect to the administration of the Act 250 program. (Amended, effective January 3, 1997.)

(4) District commission decisions regarding application fee refunds may be appealed to the board in accordance with Rule 40 of these rules. (Amended, effective January 3, 1997.)

(5) For the purposes of this rule, a "hearing" is a duly warned meeting concerning an application convened by a quorum of the board or district commission, or a hearing officer or panel of the board, at which parties may be present. However, a hearing does not include a prehearing conference. (Amended, effective March 11, 1982 and January 2, 1996.)

(6) In no event may an application fee or a portion thereof be refunded after a district commission has issued a final decision on the merits of an application. (Added, effective January 3, 1997.)

(7) In no event may an application fee refund include the payment of interest on the application fee. (Added, effective January 3, 1997.)

(E) In the event that an application involves a project or project impacts that previously have been reviewed, the applicant may petition the chair of the district commission to waive all or part of the application fee. If an application fee was paid previously in accordance with subsection (A)(1) through (4) of this rule, the chair may waive all or part of the fee for a new

or revised project if the chair finds that the impacts of the project have been reviewed in an applicable master permit application, or that the project is not significantly altered from a project previously reviewed, or that there will be substantial savings in the review process due to the scope of review of the previous application(s). (Added March 11, 1982; amended, January 3, 1997.)

(F) A commission or the board may require any permittee to file a certification of actual construction cost and may direct the payment of a supplemental fee in the event an application understated a project's construction cost. Failure to file a certification or to pay a supplemental fee shall be grounds for permit revocation under Rule 38(A).

(G) The costs of republishing a notice due to a scheduling change requested by a party shall be borne by the party requesting the change. (Added, effective June 1, 1990.)

Rule 12. Documents and Service Thereof; Page Limits; Motions and Replies

(A) All applications, notices, petitions, appeals, entries of appearance and other documents filed with the board or district commissions shall be deemed to have been filed when the document is received by the board or a district commission, except that applications which do not contain information required by the application forms and guidelines issued by the board shall be considered filed on the date that all required

information is received, as provided for in Rule 10 of these rules. (Amended, effective May 4, 1990.)

(B) The board or a district commission may treat any written communication as a document initiating a case for determination. The document initiating a case before the board or a district commission shall be signed by the petitioner or an officer thereof. (Amended, effective May 4, 1990.)

The requirements for content and service of initial documents are specified in these rules as follows: (Amended May 4, 1990.)

Petitions for Rulemaking or Declaratory Rulings: Rule 3

Applications for permits: Rule 10

Applications for permit amendments: Rule 34

Petitions for permit revocation: Rule 38

Appeals: Rule 40

Additional requirements concerning these initial documents are specified in sections (C), (D) and (G) below.

When required by these rules, the service of an initial document by a party shall be made by personal service or by certified mail, except in cases where a different manner of service is required by an applicable provision of law. (Amended, effective May 4, 1990.)

(C) Each of the following types of documents are to be double-spaced: petitions for declaratory ruling, petitions for rulemaking, notices of appeal, petitions for revocation, motions, initial legal memoranda and briefs, reply memoranda and briefs, proposed findings of fact and conclusions of law, petitions for party status, prefiled testimony, and any pleading filed with the

board.

(D) Documents are to comply with the following page limits:

(1) Motions: no more than five pages.

(2) Notices of appeal; petitions for revocation, declaratory ruling, and party status; memoranda; briefs; and other pleadings: no more than 25 pages.

(3) Reply memoranda, briefs, or other reply pleadings: no more than 25 pages.

(4) Proposed findings of fact and conclusions of law: no more than 50 pages.

(5) There is no limit on prefiled direct or rebuttal testimony or on evidentiary exhibits.

(E) All motions should be accompanied by a supporting memorandum.

(F) Unless otherwise specified in these rules, all memoranda in reply to a motion shall be filed within fifteen days of service of the motion, or within the same number of days in which the movant was required to file, whichever is shorter.

(G) For documents filed with the board, the limits contained in sections (D) and (F) of this rule may be enlarged or extended for reasonable grounds by the chair of the board. If the document is to be filed with the district commission, such enlargement or extension may be granted by the chair of the district commission. Any person seeking to enlarge a page limit or extend a filing deadline must file a written request no later than the applicable deadline. Such requests may not exceed five pages, double-spaced. If the request is to enlarge a page limit, the request may be accompanied by the subject document.

(H) All proposed findings of fact and conclusions of law should state the location of the supporting evidence in the record and should discuss the applicable legal provisions, showing how each element of a claim is met or not met based on the facts of a case. (Sections (C),(D),(E),(F),(G) and (H) added, effective January 2, 1996.)

(I) The party initiating a case before the board or a district commission shall be responsible for the cost of publication of notice of the proceeding in a local newspaper generally circulating in the area where the land is located. The district commission or board shall be responsible for the publication of the notice.

(J) Every document filed by any party subsequent to the initial document filed in a case shall be served upon the attorneys or other representatives of record for all other parties and upon all parties who have appeared for themselves. Service within this subsection of the rule shall be made upon a representative or a party by delivering a copy in person or by mailing a copy to the last known address of the individual. (Amended, effective March 11, 1982; May 4, 1990; January 2, 1996)

Rule 13. Hearing Schedules

(A) Scheduling. Hearings on applications and appeals to the board shall be scheduled and held in accordance with the statutory requirements set forth in 10 V.S.A. § 6085, except that an applicant may, with the approval of the board or district commission, waive those requirements. Hearings may be continued

until all testimony and evidence relating to the criteria set forth in the Act have been presented and all parties have had adequate opportunity in the judgment of the board or district commission to be heard. If additional hearings are required, their scheduling is within the discretion of the district commission or board.

(B) Recesses. Any time prior to adjournment of a hearing by the board or a district commission, a party may petition that the matter be recessed for a reasonable period of time. The board or district commission may, on petition or on its own motion, recess a hearing pending the convening of further hearings, receipt of submissions from parties, conduct of investigations, review of evidence in the record, deliberation or other similar reason. During such period, the applicant may, with due notice to all parties to the application, move to reopen the hearing on any of the criteria specified in 10 V.S.A. § 6086(a)(1) through (a)(10) for the purpose of offering further relevant evidence or testimony.

(C) Order of hearings. To the extent reasonable, the initial hearings on applications and appeals shall be scheduled in the order that completed applications and appeals are filed, unless an applicant waives this priority right.

Rule 14. Parties and Appearances

(A) Parties by right. In proceedings before the board and district commissions, the following persons shall be entitled to party status (Amended, effective May 4, 1990):

(1) The applicant;

(2) The landowner, if the applicant is not the landowner;

(3) The municipality in which the project site is located, and the municipal and regional planning commissions for that municipality; and if the project site is located on a boundary, any Vermont municipality adjacent to that border and the municipal and regional planning commissions for that municipality; and the solid waste management district in which the land is located, if the development or subdivision constitutes a facility pursuant to § 6602(10) of Title 10; (Amended, effective January 2, 1996.)

(4) Any state agency directly affected by the proposed project, and any state agency receiving notice of the proceedings through the Interagency Act 250 Review Committee;

(5) Any adjoining property owner who requests a hearing, or who requests the right to be heard by entering an appearance on or before the first prehearing conference or, if no prehearing conference is held, the first day of a hearing that has previously been scheduled, to the extent that the adjoining property owner demonstrates that the proposed development or subdivision may have a direct effect on the adjoiner's property under any of the 10 criteria listed at 10 VSA § 6086(a). In making a request for party status, an adjoining property owner shall provide the district commissions or the board with the following:

(a) A description of the location of the adjoining property in relation to the proposed project, including a map, if

available; (Added, effective May 4, 1990.)

(b) A description of the potential effect of the proposed project upon the adjoiner's property with respect to each of the criteria or subcriteria under which party status is being requested. (Added, effective May 4, 1990.)

(B) Parties by permission. The board or a district commission may allow as parties to a proceeding individuals or groups, including adjoining property owners, not otherwise accorded party status by statute upon petition if it finds that the petitioner has adequately demonstrated:

(1) That a proposed development or subdivision may affect the petitioner's interest under any of the provisions of § 6086(a) or

(2) That the petitioner's participation will materially assist the board or commission by providing testimony, cross-examining witnesses, or offering argument or other evidence relevant to the provisions of § 6086(a).

(3) A petition for party status under this rule may be made orally or in writing to the district commission and must be made in writing to the board, unless waived by the chair. Any such petition:

(a) must state the details of the petitioner's interest in the proceedings, including whether the petitioner's position is in support of or in opposition to the application, if known;

(b) must, in the case of a petition by an organization, describe the organization, its membership and its purposes; and

(c) must be made to the board or district commission on

or before the first hearing day if a prehearing conference is not held and to the board or district commission on or before the day of the prehearing conference, if one is held, unless the board or district commission finds that the petitioner has demonstrated good cause for failure to appear on time, and that its late appearance will not unfairly delay the proceedings or place an unfair burden on the applicant or other parties.

(4) If the request for party status is being made pursuant to section (B)(1) of this rule, the petition must include:

(a) A description of the location of the petitioner's property in relation to the proposed project, including a map, if available.

(b) A description of the potential effect of the proposed project upon the petitioner's interests with respect to each of the criteria or subcriteria under which party status is being requested.

(5) If the request for party status is being made pursuant to Rule 14(B)(2), the petition must include a description of the evidence or argument that will be presented.

The board or commission will issue an order, oral or written, granting or denying the petition. The order may restrict the participation of the petitioner to certain provisions of § 6086(a) or to certain aspects of the project, as may be appropriate under the terms of this rule. Any such order by a district commission must comply with Rule 14(F). (Amended, effective January 2, 1996.)

(C) Appearances. A party by right to a case before the board

or a district commission may appear by filing a pleading initiating a case, by attending a pre-hearing conference or hearing, or by filing a written notice of appearance with the board or commission, and serving that notice on all other parties of record. (Amended, effective May 4, 1990.)

(D) Representatives. A party to a case before the board or a district commission may appear in person, or may be represented by an attorney or other representative of his choice. The board or district commission shall enter on its docket and certificates of service the name of any representative who has appeared for a party or who has countersigned a party's pleadings. Any notice given to or by a representative of record for a party shall be considered in all respects as notice to or from the party represented. (Amended, effective March 11, 1982.)

(E) Notice for information only. The board or district commission may provide notice for information only to such additional persons as it deems appropriate. However, the receipt of notice so marked does not confer party status under § 6084(b) or this rule. (Amended, effective May 4, 1990.)

(F) Preliminary determinations of party status by district commissions and re-examination.

(1) The district commissions shall make preliminary determinations concerning party status. If a prehearing conference is not held, such determinations shall be made at the commencement of the first hearing on the application. If a prehearing conference is held, such determinations shall be made in writing immediately following the conference and prior to the

first hearing day on the application.

(2) If a district commission has made an oral preliminary determination concerning party status, a party or petitioner for party status may request that the district commission issue such determination in writing. The district commission shall issue such written determination no later than five days following the date on which the request for a written determination was made.

(3) On motion of a party or on its own motion, the district commission shall re-examine preliminary party status determinations, unless an interlocutory appeal concerning the determination(s) has been accepted by the board under Rule 43. Any re-examination of party status shall occur prior to completion of deliberations and after each party has had opportunity to present evidence, to cross-examine, and to offer argument. In such re-examination, the district commission shall presume that a party continues to qualify for party status, unless it is demonstrated that the party does not so qualify under the standards of Rule 14(A) or (B).

(4) The district commission shall state the results of all party status determinations and re-examinations in its final decision on the application. (Subsections (F)(1), (2), (3) and (4) added, effective January 2, 1996.) **See 10 VSA § 6085(c)(2).**

Rule 15. Joint Hearings

In order to avoid duplication of testimony and avoid unnecessary expense, the board and district commissions may hold

a hearing with another affected governmental agency if the agency communicates its agreement to or request for a joint hearing to the board or a district commission at least ten days before the scheduled hearing date. The communication must be in writing signed by a representative of the agency but can be sent through any party to the proceedings or directly from the affected agency. Any party may petition, in writing, to the board or district commission to request a joint hearing with another affected governmental agency.

Rule 16. Prehearing Conferences and Preliminary Rulings.

(A) Purposes. The board or a commission acting through a duly authorized delegate may conduct such prehearing conferences, upon due notice, as may be useful in expediting its proceedings and hearings. The purposes of such prehearing conferences shall be to:

(1) Clarify the issues in controversy;

(2) Identify documents, witnesses and other offers of proof to be presented at a hearing by any party; and

(3) Obtain such stipulations of parties as to issues, offers of proof and other matters as may be appropriate.

(B) Preliminary rulings. The convening officer, if a member of the board or district commission, may make such preliminary rulings as to matters of notice, scheduling, party status, and other procedural matters, including interpretation of these rules, as are necessary to expedite and facilitate the hearing process. Such rulings may also be made by a commission

chair or board chair without the convening of a prehearing conference. However, any such ruling may be objected to by any interested party, in which case the ruling shall be reviewed and the matter resolved by the board or district commission.

(C) Prehearing order. The convening officer may prepare a prehearing order stating the results of the prehearing conference. Any such order shall be binding upon all parties to the proceeding who have received notice of the prehearing conference if it is forwarded to the parties at least five day prior to the hearing. However, the time requirement may be waived upon agreement of all parties to the proceeding; and the board or a district commission may waive a requirement of a prehearing order upon a showing of cause, filing a timely objection, or if fairness so requires.

(D) Informal and non-adversarial resolution of issues. In the normal course of their duties, the board and the district commissions shall promote expeditious, informal and non-adversarial resolution of issues, require the timely exchange of information concerning an application and encourage participants to settle differences in any Act 250 proceeding. The board and district commissions may require the timely exchange of information regardless of whether parties are involved in informal resolution of issues. **See 10 VSA § 6085(e).**

Rule 17. Evidence at Hearings

(A) Admissibility. The admissibility of evidence in all cases

before the board and district commissions shall be determined under the criteria set forth in the Administrative Procedure Act, 3 V.S.A. § 810.

(B) Documents submitted for the record. Applications, certifications, and related documents accompanying applications submitted by parties shall be entered into the record of a case when they are accepted for filing by the district coordinator, district commission or board. However, all such documents shall be subject to evidentiary objections by parties to the proceeding.

(C) Order of evidence. The board or district commission shall receive evidence and testimony on any of the criteria in whatever order as appears to the board or district commission most expeditious and equitable. Upon conclusion of an offer of proof under a criterion, unless otherwise directed by the board or district commission, all other parties shall at that time present whatever evidence and testimony they intend to offer on the criterion before proceeding to another criterion. An applicant or a party may, however, request a partial review under the criteria in a particular sequence pursuant to Rule 21.

(D) Prefiled testimony. Any party to a contested case may elect to submit testimony to the board or district commission in writing. Such testimony must be clearly organized with respect to the criteria of the Act and any other issues which are addressed, and must contain a table of contents identifying the criteria and issues addressed.

(1) Notice and distribution. A party intending to utilize

prefiled testimony must notify the board or commission and all other parties of the issues to be addressed and the witnesses to be used at least 14 days prior to the hearing at which this testimony will be offered. At least 7 days prior to the hearing, the offering party must submit a copy of the testimony to each party of record, to the district coordinator or board staff, and to each board or commission member who will be reviewing the testimony. These time requirements may be waived by the board or district commission upon a showing of good cause.

(2) Hearing procedure. Prefiled testimony is intended only to facilitate presentation of a witness's direct testimony. The witness must be present at the hearing to present his direct testimony in writing and to affirm its truthfulness. Objections to the admissibility of the testimony will be heard when it is offered unless an earlier deadline for objections has been established by the board or district commission. The witness must remain available for cross-examination. If the parties have received copies of the testimony in accordance with this Rule, the board or district commission may require that cross-examination proceed immediately.

(E) Prehearing submissions. The board or district commission may direct, by way of a prehearing conference order or otherwise, that all parties to a contested case submit to the board or district commission in advance of any scheduled hearing date, a copy of all proposed exhibits, a list of all proposed witnesses, a summary of all proposed testimony, memoranda concerning any issue in controversy, prefiled testimony, or such other

information as the board or district commission deems appropriate.

Rule 18. Conduct of Hearings

(A) Quorum and deadlocks. Unless waived by all parties, a quorum of the board to conduct business, including holding a hearing, shall consist of more than half of its members, but in no event less than four members. A quorum of a district commission to conduct business, including holding a hearing, shall consist of two members. In the event that a tie vote results during the conduct of any business, conduct of business will be recessed until an uneven number of members can meet and break the tie. In the event of a hearing decision over which a deadlock exists, a rehearing will either be held or decided on the transcript or recording thereof; the decision to rehear will be made by a majority of those members of the board or district commission who convene to break the deadlock.

(B) Alternate commission members. In the event that any member of a district commission is unavailable to participate in a hearing or is disqualified, the district commission chair may, if the issues so warrant it, assign an alternate commissioner. At the request of the chair of a commission, the board chair may assign a member or members from another district to serve on the commission.

(C) Chair. At any hearing the members convened therefor will designate a member as chair to conduct the hearings if the duly appointed chair is absent, or for some other reason elects not to chair the hearing. The chair or acting chair shall have the

power to administer oaths to witnesses; and, unless a party objects, rule on questions of evidence and offers of proof, take depositions or order such to be taken, rule on the validity of service of subpoenas and other notices, and do whatever is necessary and proper to conduct the hearing in a judicious, fair and expeditious manner.

(D) Dismissal. The board may, on its own motion or at the request of a party, consider the dismissal, in whole or in part, of any matter before the board for reasons provided by these rules, by statute, or by law. At the request of a party or on its own motion, the board will entertain oral argument prior to considering any such dismissal; such argument shall be preceded by notice to the parties unless dismissal is considered at a regularly convened hearing on the matter. A decision to dismiss shall include a statement of findings of fact and conclusions of law and shall be made within 20 days of the final hearing at which dismissal is considered.

(E) Recording of proceedings. A qualified stenographer or an electronic sound recording device shall be used to record all hearings where:

(1) An even number of board or district commission members are conducting the hearing; or

(2) A party requests that proceedings be recorded; or

(3) When the board or commission deems appropriate.

Any party intending to stenographically record a hearing shall so notify the commission or board not less than one working day prior to the hearing. The party requesting this method of

recording shall be responsible for arranging the appearance of, and payment to, the stenographer. A copy of any transcript shall be provided to the board or district commission without cost; other parties wishing a copy shall reimburse the requesting party on a pro rata basis. Disputes over sharing of costs shall be resolved by the board or district commission.

(F) Completion of deliberations. A hearing shall not be closed until a district commission or the board has provided an opportunity for all parties under the relevant criteria to respond to the last permit or evidence submitted. Once a hearing has been closed, a commission or the board shall conclude deliberations as soon as is reasonably practicable. A decision of a commission or the board shall be issued within 20 days of the completion of deliberations. (Amended, effective 1995.)

See 10 V.S.A. § 6085(f).

Rule 19. Compliance with Other Laws - Presumptions

(A) Alternative procedures. In the event that a subdivision or development is also subject to standards of or requires one or more permits from another state agency, the applicant may elect to follow any one or any combination of the following procedures:

(1) Obtain other permits or certifications before filing the Act 250 application (See (B) below); or

(2) File the Act 250 application prior to, or together with other applications, but with an intention to use other permits or certifications to establish presumptions of compliance with substantive criteria of the Act (See (C) below); or

(3) With the approval of the district commission, an Act 250

application may be filed first, with an intention to satisfy certain substantive criteria of the Act with independent evidence of compliance (See (D) below).

In addition, an applicant may file an application for partial findings under the appropriate criteria in accordance with Rule 21. (Amended, effective January 2, 1996.)

(B) Permits accompanying application. If the applicant obtains applicable permits or certifications listed in section (E) of this rule prior to filing an Act 250 application, he or she shall attach copies of such permits or certifications to the application. Such permits and certifications, when entered in the record pursuant to Rule 17(B), will create presumptions of compliance with the applicable criteria of the Act in the manner set out in section (F) of this rule.

(C) Permits obtained after application. If an applicant states an intention to use applicable permits or certifications not yet issued to raise presumptions under this rule, the board or district commission may, at its discretion, defer issuing a land use permit until the necessary permits or certifications are issued, and may recess the hearing until they are submitted by the applicant. The applicant must submit copies of each permit or certification relied upon to the district commission or board. The district commission or board will, within five days, forward copies of each permit or certification to each party who has requested an opportunity to review it, together with a notice of the party's right to request a reconvened hearing. (Amended, effective January 2, 1996.)

Rule 19.

The district commission or board may reconvene the hearing on its own motion, or upon the request of a party intending to rebut the presumption or claiming that there has been a substantial change in circumstances pertaining to the application. Any request by a party to reconvene must be filed within 10 days of the date of mailing of the permit or certification and notice. If no such request is received, the hearing will be considered closed on the relevant criteria. If a request is received and the hearing is reconvened, evidence will be taken in the manner set out in section (F) of this rule.

(D) No reliance on permits. With district commission approval, an applicant may seek to satisfy the burden of proof under applicable criteria of the Act without submitting permits or certifications from other state agencies by offering affirmative evidence through testimony, exhibits and other relevant material upon which the district commission or board can make findings of fact and conclusions of law. However, if any of the permits or certifications identified in section (E) of this Rule must be obtained prior to construction or use of the project, or portion thereof, the district commission or board may, on its own motion or on motion by a party, defer taking evidence until the necessary permits or certifications are issued and may recess the hearing until they are submitted by the applicant. If action is deferred, the provisions of section (C) of this rule shall apply.

(E) Permits creating presumptions. In the event a subdivision or development is also subject to standards of or requires one or

more permits from another state agency, such permits or certifications of compliance, when entered in the record pursuant to Rule 17(B), will create the following presumptions:

(1) That waste materials and wastewater can be disposed of through installation of wastewater and waste collection, treatment and disposal systems without resulting in undue water pollution: (Amended, effective May 4, 1990.)

(a) A subdivision permit - Agency of Natural Resources, under 18 V.S.A. Chapter 23 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(b) A water supply and wastewater disposal permit (even if limited to exterior sewer approval only) - Agency of Natural Resources under 10 V.S.A. Chapter 61 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(c) A mobile home park permit - Agency of Natural Resources, under 10 V.S.A. Chapter 153 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(d) A campground permit - Agency of Natural Resources, under 3 V.S.A. § 2873(c) and rules adopted thereunder. (Amended, effective May 4, 1990.)

(e) A discharge permit for a discharge or for a wastewater treatment facility owned or controlled by the applicant and to be used by the project - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(f) A certification of compliance that the project's use of a sewage treatment facility not owned or controlled by the

applicant complies with the permit issued for that facility by the Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(g) A sewer lines extension permit - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Added, effective January 2, 1996.)

(h) An underground injection permit for the discharge of non-sanitary waste into an injection well - Agency of Natural Resources, under 10 V.S.A. Chapter 47 and rules adopted thereunder. (Added, effective January 2, 1996.)

(i) A solid waste or hazardous waste certification - Agency of Natural Resources, under 10 V.S.A. Chapter 159 and rules adopted thereunder. (Amended, effective May 4, 1990 and January 2, 1996.)

(j) An underground storage tank permit with regard solely to the substance to be stored in the underground storage tank - Agency of Natural Resources under 10 V.S.A. Chapter 59 and rules adopted thereunder. (Added, effective January 2, 1996.)

(2) That no undue air pollution will result:

(a) Air Pollution Control Permit - Agency of Natural Resources, under 10 V.S.A. § 556 and rules adopted thereunder. (Amended, effective May 4, 1990 and January 2, 1996.)

(3) That a sufficient supply of potable water is available:

(a) Public utility permit - Public Service Board under 30 V.S.A. §§ 203 and 219.

(b) Municipal permit - Local water authority.

(c) Subdivision permit - Agency of Natural Resources, under 18 V.S.A. Chapter 23 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(d) Water supply and wastewater disposal permit (even if limited to exterior water approval only) - Agency of Natural Resources under 10 V.S.A. Chapter 61 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(e) Mobile home park permit - Agency of Natural Resources, under 10 V.S.A. Chapter 153 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(f) Campground permit - Agency of Natural Resources, under 3 V.S.A. Chapter 51 and rules adopted thereunder. (Amended, effective May 4, 1990.)

(g) A public water system construction permit - Agency of Natural Resources, under 10 V.S.A. Chapters 48, 56, and 61; 18 V.S.A. § 1218, and rules adopted thereunder. (Amended, effective January 2, 1996.)

(h) A public water system operating permit - Agency of Natural Resources, under 10 V.S.A. Chapters 48, 56, and 61; 18 V.S.A. § 1218, and rules adopted thereunder. (Added, effective January 2, 1996.)

(4) That the application of pesticides will not result in undue water or air pollution and will not cause an unreasonable burden on an existing water supply:

(a) Permit for the application of herbicides to

under 6 V.S.A. Chapter 87 and rules adopted thereunder.

(5) That the development or subdivision will not violate the rules of the water resources board relating to significant wetlands:

(a) A conditional use determination with respect to uses in class one or class two wetlands or their buffer zones - Agency of Natural Resources under 10 V.S.A. Chapter 37, and rules adopted thereunder. (Added, effective January 2, 1996.)

(F) Effect of presumptions. A permit or certification filed under this rule shall create a rebuttable presumption that the portion of the development or subdivision subject to the permit or certification is not detrimental to the public health and welfare with respect to the criteria specified in these rules. However, the district commission or board may on its own motion question the applicant, the issuing agency or other witnesses concerning the permit or certification, and any party may challenge the presumption. If a party challenges the presumption, it shall state the reasons therefor and offer evidence at a hearing to support its challenge. If the commission or board concludes, following the completion of its own inquiry or the presentation of the challenging party's witnesses and exhibits, that a preponderance of the evidence shows that undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the water resources board relating to significant wetlands is likely to result, then the commission or

board shall rule that the presumption has been rebutted. Technical non-compliance with the applicable health, water resources and Agency of Natural Resources' rules shall be insufficient to rebut the presumption without a showing that the non-compliance will result in, or substantially increases the risk of, undue water pollution, undue air pollution, inadequate water supply, unreasonable burden on an existing water supply, or violation of the rules of the water resources board relating to significant wetlands. Upon the rebuttal of the presumption, the applicant shall have the burden of proof under the relevant criteria and the permit or certification shall serve only as evidence of compliance.

(G) Changes requiring amendment. In the event a permit or certification issued after the filing of an Act 250 application imposes restrictions or conditions which substantially change the character or impacts of the proposed subdivision or development, the applicant shall amend the application to reflect such changes with due notice to all parties. The district commission or board may, on its own motion or on motion of any party, reconvene a hearing to consider evidence which is relevant to such changes.

(H) As used in this rule, the terms "permit" and "certification" shall refer to any written document issued by the appropriate state agency attesting to a project's compliance with the regulations or statutes listed in section (E) of this rule. With respect to approvals identified in section (E)(1) of this rule, a commission or the board may accept a "site and foundation